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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,788	01/23/2004	Thomas E. Gorsuch	TAN-2-1401.05.US	7918
24374	7590	10/05/2007	EXAMINER	
VOLPE AND KOENIG, P.C.			CONTEE, JOY KIMBERLY	
DEPT. ICC			ART UNIT	
UNITED PLAZA, SUITE 1600			PAPER NUMBER	
30 SOUTH 17TH STREET			2617	
PHILADELPHIA, PA 19103			MAIL DATE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/763,788	Applicant(s) GORSUCH ET AL.	
	Examiner Joy K. Contee	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 48 and 49 is/are pending in the application.
- 4a) Of the above claim(s) 48 & 49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 48 & 49 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/14/07</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 48 and 49 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: new claims 48-49 describe a method comprising receiving data for transmissions by a first protocol layer of a CDMA subscriber unit, which delivers the received data to a second protocol layer of the CDMA subscriber unit; formats the delivered data for transmissions and third protocol layer which schedules the delivered data for transmission and a physical protocol layer for transmitting the scheduled data over a reverse data traffic channel.

The original claims were directed towards a base station for providing wireless communication of digital signals over a plurality of communication paths, the digital signals being communicated using at least one radio frequency channel via Code Division Multiple Access (CDMA) modulated radio signals, the base station comprising: a wireless transceiver for establishing a communication session over a first digital communication path; and a bandwidth management module connected to said wireless transceiver for allocating a plurality of code channels within the at least one radio frequency channel for exchanging digital signals over the first digital communication path during the communication session, the plurality of code channels including at least one traffic portion that is established for a predetermined time and at least one control portion that is continuously available, and a number of code channels allocated to the

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traffic portion changing during the communication session based upon bandwidth requirements; said bandwidth management module reallocating the at least one traffic portion from the first digital communication path to a second digital communication path if an extension of time is not requested from the base station over the first digital communication path for the at least one traffic portion, or if the base station no longer has digital signals to transmit over the first digital communication path via the at least one traffic portion, but with the at least one reallocated traffic portion appearing as though it is still continuously available to the first digital communication path.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 48 and 49 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy K. Contee whose telephone number is 571.272.7906. The examiner can normally be reached on Monday through Friday, 5:30 a.m. to 2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on 571.272.7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC

  
**JOHN K. CONTEE**  
**PATENT EXAMINER**